

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Chaz Kodi Payne,

Plaintiff,

v.

LVMPD, *et al.*,

Defendants.

Case No. 2:18-cv-01715-MMD-NJK

ORDER

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a county inmate. On September 11, 2018, this Court issued an order denying the application to proceed *in forma pauperis*, without prejudice, because the application was incomplete. (ECF No. 3 at 1-2.) The Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$400.00 no later than October 11, 2018. (*Id.* at 2.) The deadline has now expired, and Plaintiff has not filed another application to proceed *in forma pauperis*, paid the full filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure

1 to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439,
2 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se*
3 plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128,
4 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson v.*
5 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure
6 to comply with local rules).

7 In determining whether to dismiss an action for lack of prosecution, failure to obey
8 a court order, or failure to comply with local rules, the court must consider several factors:
9 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
10 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
11 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
12 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
13 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

14 In the instant case, the Court finds that the first two factors, the public's interest in
15 expeditiously resolving this litigation and the Court's interest in managing the docket,
16 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
17 in favor of dismissal, since a presumption of injury arises from the occurrence of
18 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
19 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy
20 favoring disposition of cases on their merits—is greatly outweighed by the factors in favor
21 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
22 the court's order will result in dismissal satisfies the "consideration of alternatives"
23 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d
24 at 1424. The Court's order requiring Plaintiff to file another application to proceed *in forma*
25 *pauperis* or pay the full filing fee no later than October 11, 2018 expressly stated: "IT IS
26 FURTHER ORDERED that, if Plaintiff does not timely comply with this order, dismissal of
27 this action may result." (ECF No. 3 at 2). Thus, Plaintiff had adequate warning that
28 dismissal would result from his noncompliance with the Court's order to file another

1 application to proceed *in forma pauperis* or pay the full filing fee no later than October 11,
2 2018.

3 It is therefore ordered that this action is dismissed without prejudice based on
4 Plaintiff's failure to file another application to proceed *in forma pauperis* or pay the full
5 filing fee in compliance with this Court's September 11, 2018 order.

6 It is further ordered that the Clerk of Court shall enter judgment accordingly.

7 DATED THIS 14th day of November 2018.

8 

9 _____
10 MIRANDA M. DU
11 UNITED STATES DISTRICT JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28